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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,107	10/24/2003	Jeffrey D. Sutherland		4835
7590	11/15/2004		EXAMINER	
Michael G. Vieira 187 Pleasant Street Lowell, MA 01852			KING, ANITA M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/695,107	SUTHERLAND ET AL. 
	<b>Examiner</b>	<b>Art Unit</b>
	Anita M. King	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/24/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

This is the first office action for application number 10/695,107, Carrier for Various-Sized Articles Operatively Supported by a Vehicle, filed on October 24, 2003.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "9". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because the bearing members cited in claim 1 are not labeled in the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement

sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble of claim 1 and claims 5-7, thereby making the scope of the invention unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "an apparatus for supporting one or more articles of various sizes on a vehicle surface...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "an apparatus," the articles and the vehicle surface being only functionally recited. This presents no problem as long as the body of the claim also refers to the article or vehicle surface functionally.

The problem arises when the vehicle surface is positively recited within the body of the claim, such as, "wherein the platform is positioned on the vehicle surface," in claim 5; "wherein the vehicle surface is substantially horizontal," in claim 6; and "wherein the vehicle surface is angled," in claim 7. The examiner cannot be sure if applicant's intent is to claim merely the apparatus or the apparatus in combination with the vehicle surface.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the apparatus alone or the combination of the apparatus and the vehicle surface. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by German Publication 19936653 to Fleck. Fleck discloses an apparatus (10) for supporting an article (2) on a vehicle surface (3) during transport with a vehicle, the

apparatus comprising: a substantially planar platform (4), the platform comprising a top slip-resistant surface (4a, 16, 17), a bottom slip-resistant surface (4b, 21), a plurality of bearing members, a plurality of slots (6) separating the bearing members, one or more handles (11), and a recess (24) defined within a bottom area of the platform containing the plurality of slots; one or more straps (5, 9) engaged with the platform through two or more of the slots, bearing against two or more of the bearing members and passing through the recess, the straps securing the articles to the platform; wherein the top and bottom surfaces are composed of plastic; wherein the one or more straps are removable from the platform; wherein the platform is positioned on the vehicle surface; wherein the straps pass through the recess without contacting the vehicle surface; and wherein the straps vary in width and length according to a size of the one or more articles to be supported.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,487,443 to Adamick in view of U.S. Patent 5,131,576 to Turnipseed. Adamick discloses an apparatus (10) capable of supporting one or more articles on a vehicle surface, the apparatus comprising: a substantially planar platform (12) for supporting the articles, the platform including a top surface (32), a bottom surface, a plurality of bearing members (24a, 24b, 72), a plurality of slots (70), separating the bearing

members, a handle (52), and a recess (Fig. 1) defined within a bottom area of the platform containing the plurality of slots; one or more straps (16) engaged with the platform through two or more of the slots, bearing against two or more of the bearing members and passing through the recess, the straps securing the articles to the platform; the surfaces are composed of plastic; the straps being permanently fastened to the platform within the recess; wherein one or more of the straps are removable from the platform; wherein the straps pass through the recess without contacting the supporting surface; and wherein the handle is formed at an obtuse angle to the platform.

Adamick discloses the claimed invention except for the limitations of the top and bottom surfaces being slip-resistant. Turnipseed discloses an apparatus for supporting articles, comprising a platform (12) having a top slip-resistance surface and a bottom slip-resistance surface. It would have been obvious to one having ordinary skill in the art to have modified the platform in Adamick to have included the platform material as taught by Turnipseed for the purpose of preventing unwanted slippage of the articles relative to the platform and the platform relative to the supporting surface.

Claims 3, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleck. Fleck discloses the claimed invention except for the limitations of the one or more straps being permanently fastened to the platform and the vehicle surface being horizontal or angled.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the straps in Fleck to have been permanently fastened to the platform, since it has been held that forming in one piece an article which has formerly

been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the vehicle surface in Fleck to have been horizontal or angled for the purpose of providing an alternative surface for supporting the one or more articles via the apparatus.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,943,775 to Mack

U.S. Patent 4,308,982 to Hall

U.S. Patent 4,790,460 to Harper, Jr.

U.S. Patent 4,862,994 to Hughes, Sr.

U.S. Patent 5,285,797 to Zeller

U.S. Patent 5,657,766 to Durham

U.S. Patent 5,839,713 to Wright

U.S. Patent 6,581,891 to Byrd

U.S. Patent 6,588,440 to Varnado

U.S. Patent 6,655,564 to Zupan

The above patents all disclose various devices comprising platforms and straps for supporting an article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anita M. King  
Primary Examiner  
Art Unit 3632

November 9, 2004